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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER,
Respondents.

MOTION FOR DOCKETING AND SUBMISSION OF PETITIONER'S MOTION TO REMAND FOR CONSIDERATION ON THE MERITS BY THE COURT

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Paul Ginsburg, respectfully moves this Honorable Court to enter an Order directed to Hon. John F. Davis, Clerk of this Court, requiring and compelling the said Clerk to perform his mandatory and ministerial functions in respect to the above entitled cause by docketing and submitting the petitioner's Motion to Remand to the Chief Justice of the United States and to the Associate Justices of the Supreme Court of the United States for consideration and adjudication on the merits thereof; and in support hereof avers:

Motion for Consideration by the Court.

1. On November 6, 1963, petitioner's Motion to Remand and, in the alternative, Petition for Rehearing, which fully complied with the accepted practice and the applicable Rules of this Court, were lodged in the Office of the Clerk of this Honorable Court. At that time the bonded Clerk had an absolute duty to docket those pleadings and submit them to the Court for consideration on the merits.

2. It is elementary that the functions of a Clerk are strictly ministerial and never judicial. There are no substantive exceptions; and the only procedural ones, that cannot actually be regarded as exceptions, are found in this Honorable Court's Rules 34 relating to enlargement of time and 53 relating to proceedings in forma pauperis, both of which are wholly inapplicable herein. It follows, therefore, that for all purposes in the instant proceeding, there are absolutely no exceptions. Even if this Honorable Court's Rules contained provisions for delegation of judicial functions, they would be unenforceable. Consequently, the Clerk was forbidden from examining those pleadings for the purpose of adjudicating them on the merits. Chief Deputy Clerk Cullinan, nonetheless, examined those authoritatively self-sustaining pleadings for such purpose, and erroneously concluded that both said pleadings together merely constituted a petition for rehearing, with the result that only the Petition for Rehearing was docketed and submitted to the Court and not the Motion to Remand. Mr. Cullinan's unlawful and unconstitutional usurpation of the functions of this Honorable Court were condoned and concurred in by Mr. Davis, the Clerk of the Court.

3. Mr. Cullinan's "judgment" was not only erroneous, but also unlawful. It is incredible that the rights

of litigants in Courts of Record can be illegally and unconstitutionally destroyed at the whim and caprice of a Clerk in advance of filing the pleadings. In the first place, Messrs. Davis and Cullinan are not "learned in the law". In the second place, even if they had become worthy of being referred to as "learned in the law", it is obvious from their erroneous and unwarranted conclusions that they actually are not, because they apparently were unable to comprehend either the presence of all the essential ingredients and elements in the Motion to Remand or this Honorable Court's pronouncements made in the cases cited therein as authority for your petitioner's right to have this cause remanded.

4. Counsel for petitioner complained to Mr. Cullinan about his actions in re using to docket and submit the said Motion to Remand. Mr. Cullinan nevertheless refused to change his decision, but stated that if a new printed Motion to Remand were lodged with him, he would docket and submit it to the Court.

5. Counsel for petitioner thereupon forwarded a new authoritatively self-sustaining printed Motion to Remand, which was lodged with the Clerk. Mr. Davis then sanctioned and continued Mr. Cullinan's prior actions and refused to docket and submit the new Motion to Remand.

6. It cannot be denied that Messrs. Davis and Cullinan by their actions have unlawfully usurped judicial functions of this Honorable Court. Nor can it be denied that a most dangerous precedent could be set, if this Honorable Court should not act now to retrieve and perform its own functions. In view of the nature of their usurpation and the evident bias and damages

resulting therefrom to your petitioner, it is respectfully submitted that the greatest danger lies in the fact that Messrs. Davis and Cullinan supposedly perform their clerical functions in wide open offices where they are easily approached by interested parties; whereas the justices of this Honorable Court perform their judicial functions behind the closed doors of their chambers, where they are unapproachable. Thus your petitioner is justified in arguing that Clerks should never be permitted to perform any judicial functions, because of their availability and susceptibility to being improperly influenced.

7. Presumptuously, Messrs. Davis and Cullinan in their written communications to counsel for petitioner in effect assured him that this Honorable Court has delegated these functions to them. If so, which petitioner doubts, these Clerks have made it manifest that the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States have unlawfully delegated judicial powers and duties to persons whose authorized duties are merely ministerial. Has this unlawful delegation of judicial functions actually been made and authorized by this Honorable Court or has it really been a usurpation, as contended by your petitioner? This question must hastily be answered by this Honorable Court for its own sake!

8. It should be readily apparent to anybody really learned in the law that the arbitrary actions of these Clerks have brought about deprivations of federally guaranteed property and civil rights. It is apparent from the Record that petitioner has been unsuccessfully seeking his guaranteed right to be heard in advance of judgment.

9. Since the illegal actions of these Clerks have deprived your petitioner of his federally guaranteed right to litigate with due process of law, in a case involving substantial deprivations of property and civil rights, they have become personally liable to your petitioner for the damages resulting therefrom.

10. Whether or not these Clerks are in favor of the Civil Rights Acts, they have violated them through their said usurpation of judicial functions, rendering themselves personally liable not only in District Court civil rights actions, but also in actions on their bonds.

11. It might be contended that the crucial question could be whether or not their unlawful usurpation of this Honorable Court's judicial functions has stemmed from an unlawful delegation. This question, of course, should be answered by this Honorable Court, because the Right to Know of the citizenry in general and the members of the Bar in particular, requires it. Once they know this answer, litigants and their attorneys will be in better position to know how to handle their cases.

12. Your petitioner contends, however, that for all practical purposes there is no such crucial question, because the delegation of such judicial functions is quite as unlawful as the usurpation of them. It necessarily follows that regardless of such actions whether by usurpation or delegation, the actions of these Clerks remain a nullity.

13. In view of the foregoing, it would seem that the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States of America have no choice but to grant the instant Motion.

Although your petitioner claims usurpation, and the Clerks claim delegation, the awful truth is that a meticulous regard for the fair and proper administration of justice in the Federal System indeed requires that this Honorable Court direct its Clerk to docket the petitioner's new Motion to Remand as of November 6, 1963, and then to submit copies thereof to the Chief Justice and the Associate Justices of this Honorable Court for its consideration and adjudication on the merits.

14. In view of the current unlawful performances of judicial functions by these Clerks, counsel for petitioner and other practitioners are certainly justified in wondering how many prior denials of authoritatively self-sustaining pleadings, ostensibly presented to this Honorable Court in other cases during the past several years, have actually been denied by Chief Deputy Clerk Cullinan, with or without the knowledge and sanction of the then Clerk of the Court, instead of actually being denied by this Court after its own careful consideration of the merits.

Respectfully submitted,

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